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No. 89-1008

Supreme Court, U.S.
FILED
JUN 21 1990
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1989

DWIGHT H. OWEN

Petitioner

vs

HELEN OWEN

Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

JOINT APPENDIX

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Petition for Writ of Certiorari
filed November 29, 1989
Certiorari Granted May 14, 1990

BEST AVAILABLE COPY

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Federal Statutes Involved

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Florida Statutes**Chapter 222.20 16**Docket #
715160

01/13/96	Exh	Voluntary Bankruptcy
01/22/96	Exh	Dismissal of Bankruptcy Case of Insolvent by Debtor
01/26/96	Exh	Dismissal of Bankruptcy by Insolvent Debtor
01/26/96	Exh	Dismissal of Case Due to Dis- charge of Debtor
02/05/96	Exh	Section 101 Bankruptcy Dis- charge of Debtor
02/23/96	Exh	Order of Bankruptcy Dis- charge of Debtor
02/26/96	Exh	Order of Bankruptcy Dis- charge of Debtor
03/05/96	Exh	Dismissal of Case and Dis- charge of Debtor
03/16/96	Exh	Dismissal of Case
04/13/96	Exh	Order of Discharge of Debtor of Insolvent by Debtor
		Order of Discharge of Debtor of Insolvent by Debtor

RELEVANT DOCKET ENTRIES
(Complete)

United States Bankruptcy Court

Date of
Filing

01/13/86 Ex1 Voluntary Petition
01/23/86 Ex2 Objection to Debtor's Claim
of exemptions by Helen Owen
01/28/86 Ex3 Request for Admissions by
Helen Owen
02/18/86 Ex4 Motion to Stay Entry of Dis-
charge by Helen Owen
02/18/86 Ex5 Motion to Condition Order of
Discharge by Helen Owen
02/25/86 Ex6 Order that Motion to Stay
Entry of Discharge be DENIED
without prejudice
02/25/86 Ex7 Order that Motion to Condi-
tion Order of Discharge be
DENIED without prejudice
03/05/86 Ex8 Proof of Claim and Power of
Attorney by Helen Owen
05/19/86 Ex9 Discharge of Debtor
08/13/86 Ex10 Order on Objection to Claim
of Exempt Property: Ordered
that objection to exemption
claim filed by Helen Owen
be overruled and that sub-
ject property shall not be
turned over to the Trustee
(cont.)

08/20/87 Ex11

for administration for the benefit of the creditors of the estate without further interference from the Bankruptcy Court

08/20/86 Ex11 Motion for Extension of Time by Helen Owen

08/26/86 Ex12 Order that time within which Helen M. Owen may file a Notice of Appeal from the order dated 08/13/86 be extended to 09/12/86

12/12/86 Ex13 Motion to Avoid Lien by Dwight H. Owen

12/16/86 Ex14 Application to Re-Open Chapter 7 case by Dwight H. Owen

12/19/86 Ex15 Order that Motion to Avoid Lien filed by Helen Owen be DENIED without prejudice

01/08/87 Ex16 Notice of Hearing on Application to Reopen Estate by Debtor

01/27/87 Ex17 Rescheduled Notice of Hearing on Application to Reopen Estate by Debtor

02/17/87 Ex18 2nd Rescheduled Notice of Hearing on Application to Reopen Estate by Debtor

03/20/87 Ex19 3rd Rescheduled Notice of Hearing on Application to Reopen Estate

04/13/87 Ex20 Motion to Avoid Lien by Debtor

04/20/87 Ex21 Order that Debtor's Motion to reopen be GRANTED; that this cause is reopened for the limited purpose of permitting Debtor to file a Motion to Avoid Lien within 30 days of the date of this order

04/23/87 Ex22 Order that respondent be directed to file written response be GRANTED

04/30/87 Ex23 Response to Motion to Avoid Lien by Helen Owen

05/26/87 Ex24 Notice of Hearing on Motion to Avoid Lien filed by Debtor

12/01/87 Ex25 Order that Motion to Avoid Judgment Lien of Helen Owen be GRANTED and the judgment lien of Helen Owens be deemed to be invalid and of no force and effect

12/07/87 Ex26 Motion to Amend or Make Additional Findings of Fact Pursuant to Rule 7052(b), to Alter or Amend the Order on Motion to Avoid Judgment Lien Pursuant to Rule 9023, and for a new trial pursuant to Rule 9023 of the Bankruptcy Rules by Helen Owen

01/17/88 Ex27 Order granting creditors meeting

02/08/88 Ex28 Order that Motion to Amend be GRANTED; that Motion to Avoid Judgment Lien entered (cont.)

04/07/88
04/20/88
06/07/88
03/22/88

be AMENDED; that Debtor's Motion to Avoid Judgment Lien be DENIED

02/16/88 Ex29 Notice of Appeal

02/23/88 Ex30 Designation of Record and Statement of Issues by Debtor

03/22/88 Ex31 Transcript of Motion Hearing 08/21/87

United States District Court

03/25/88 * Notice to Counsel - letter advising of District Court Case Number sent to all counsel and bankruptcy court

04/04/88 2 Emergency Motion for Order Permitting the Filing of Appeal Brief in accordance with Rule 8010 of the Bankruptcy Rules of Procedure

04/04/88 3 Affidavit of Roger L. Fishell and proposed order attached

04/05/88 4 Supplemental Transmittal of Record to District Court with Certified Copy of Document Sheet attached

04/05/88 5 Order that motion be GRANTED Appellant may file a brief in excess of 20 pages but not to exceed 35 pages and may exercise right to file a reply brief

04/07/88 6 Brief of Appellant

04/20/88 7 Brief of Appellee

04/28/88 8 Request for Oral Argument by Appellant

04/28/88 9 Reply Brief of Appellant

06/07/88 10 Order that Order on Motion to Amend or Make Additional Findings and to Alter or Amend Order on Motion to Avoid Judgment Lien filed 02/08/88 is AFFIRMED. The Clerk is directed to enter Judgment in accordance with this Order.

06/07/88 11 Judgment that the Bankruptcy Court's Decision is AFFIRMED

06/21/88 12 Notice of Appeal of order affirming Bankruptcy Court by Dwight Owen

06/21/88 * Transmittal letter to USCA forwarding certified copies of docket entries, notice of appeal, order/judgment appealed from

06/27/88 13 Acknowledgment of Notice of Appeal by USCA

07/05/88 14 Motion to Temporarily Retain Record by Appellant. GRANTED

07/05/88 15 Appellant's Rule Certification

07/05/88 * Correspondence from U. S. Court of Appeals requesting copies

08/05/88 * Transmitted certified copy of Docket Sheet and Copy of Motion to Temporarily Retain Record by Appellant to USCA per request

10/27/88 * Request from USCA to forward File FRAP Rule 11

10/31/88 * Transmittal letter to USCA forwarding 1 volume of pleadings and 1 volume of exhibits

United States Court of Appeals

09/15/88 Brief of Appellant Dwight H. Owen and Records Excerpts

10/17/88 Brief of Appellee Helen Owen

10/25/88 Reply Brief of Appellant Dwight H. Owen

02/06/89 Oral Argument

07/11/89 Opinion of the United States Court of Appeals affirming the decision of the United States District Court

07/11/89 Judgment of the United States Court of Appeals affirming the judgment of the United States District Court

07/28/89 Petition for Rehearing and
Suggestion for Rehearing In
Banc filed by Dwight H. Owen

08/31/89 Order Denying Petition for
Rehearing and Denying
Suggestion for Rehearing In
Banc

Rule 7052(b) and Rule 27 Amend the
United States Supreme Court

11/29/89 Petition for Writ of Certiorari
to United States Court of
Appeals, 11th Circuit, filed
by Dwight H. Owen

04/16/90 Respondent's Response to
Petition for Writ of Certiorari
filed by Helen Owen

05/14/90 Order Granting Petition for
Writ of Certiorari

UNITED STATES BANKRUPTCY COURT

Order on Motion to Amend or Make Additional Findings of Fact Pursuant to Rule 7052(b) and to Alter or Amend the Order on Motion to Avoid Judgment Lien Pursuant to Rule 9023 (Printed as Appendix to Petition for Writ of Certiorari pp. A24 - A27).

UNITED STATES DISTRICT COURT

Order and Judgment Affirming Order on Motion to Amend or Make Additional Findings of Fact Pursuant to Rule 7052(b) and to Alter or Amend Order on Motion to Avoid Judgment Lien Pursuant to Rule 9023 (Printed as Appendix to Petition for Writ of Certiorari, pp. A13 - A23, A32).

UNITED STATES COURT OF APPEALS

Opinion and Judgment affirming the
United States District Court (Printed
as Appendix to Petition for Writ of
Certiorari, pp. A1 - A12, A30 - A31).

Order Denying Petition for Rehearing
and Suggestion for Rehearing In Banc
(Printed as Appendix to Petition for Writ
of Certiorari, pp. A28 - A29).

UNITED STATES SUPREME COURT

Order Granting Petition for Writ of
Certiorari entered 14 May 1990.

FEDERAL**STATUTORY PROVISIONS INVOLVED****11 U.S.C. § 522(b)**

Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (1) or, in the alternative, paragraph (2) of this subsection. In joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Bankruptcy Rules, one debtor may not elect to exempt property listed in paragraph (1) and the other debtor elect to exempt property listed in paragraph (2) of this subsection. If the parties can

not agree on the alternative to be elected, they shall be deemed to elect paragraph (1), where such election is permitted under the law of the jurisdiction where the case is filed. Such property is --

(1) property that is specified under subsection (d) of this section, unless the state law that is applicable to the debtor under paragraph (2)(A) of this subsection specifically does not so authorize; or, in the alternative,

(2)(A) any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of the petition, or for a longer portion of such 180-day period than in any other place; and

(B) any interest in property in which

the debtor had, immediately before the commencement of the case, an interest as tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law.

11 U.S.C. § 522(f)

Notwithstanding any waiver of exemptions, the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is --

(1) a judicial lien;

FLORIDA**CONSTITUTIONAL PROVISIONS INVOLVED****Article X, Section 4, Florida Constitution**

(a) There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty, the following property owned by a natural person:

(1) a homestead, if located outside a municipality, to the extent of one hundred sixty acres of contiguous land and improvements thereon, which shall not be reduced without the owner's consent by reason of subsequent inclusion in a municipality; or if located within a municipality, to the

extent of one-half acre of contiguous land, upon which the exemption shall be limited to the residence of the owner or his family;

(2) personal property to the value of one thousand dollars.

(b) These exemptions shall inure to the surviving spouse or heirs of the owner.

(c) The homestead shall not be subject to devise if the owner is survived by spouse or minor child, except the homestead may be devised to the owner's spouse if there be no minor child. The owner of homestead real estate, joined by the spouse if married, may alienate the homestead by mortgage, sale or gift and, if married, may by deed transfer the title to an estate by the entirety with the spouse. If the owner or spouse is incompetent, the method of alienation or encumbrance shall be as provided by law.

Article XI, Section 5, Florida Constitution

(c) If the proposed amendment or revision is approved by vote of the electors, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.

FLORIDA

STATUTORY PROVISIONS INVOLVED

Chapter 222.20, Florida Statutes

In accordance with the provision of s. 522(b) of the Bankruptcy Code of 1978 (11 USC s522(b)), residents of this state shall not be entitled to the federal exemptions provided in s. 522(d) of the Bankruptcy Code of 1978 (11 USC s522(d)).

Nothing herein shall affect the exemptions given to residents of this state by the State Constitution and the Florida Statutes.